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DEPARTMENT OF CONSERVATION AND NATURAL RESOURCES  
**DIVISION OF ENVIRONMENTAL PROTECTION**

333 W. Nye Lane, Room 138  
Carson City, Nevada 89706

December 10, 2004

Mr. Wayne Nastri  
US EPA Region 9  
75 Hawthorne Street  
San Francisco, CA 94105

Dear Mr. Nastri:

As you are aware, the Nevada Division of Environmental Protection (NDEP), the U.S. Environmental Protection Agency (EPA) and the U.S. Bureau of Land Management (BLM) have been working collaboratively under a Memorandum of Understanding (MOU) since March 28, 2002 to address environmental conditions at the Yerington Mine. The MOU has lead to progress at the site with the implementation of numerous Interim Measures that have reduced real and potential impacts to human health and the environment. Additionally, the Agencies have made genuine progress on the development and implementation of numerous workplans to address characterization of the site.

The NDEP believes that recent successes have been achieved in improving the function of this multi-agency structure. When the MOU was written, the Agencies had honorable intentions, "to ensure a unified approach to response activities...to coordinate their respective response actions...participate in all investigations [etc.]...by working through the process established by this MOU." The primary benefit of the MOU process was that it provided a forum for technical brainstorming to bring more ideas to the table in the scientific arena. A drawback of not defining any one of the three entities as a lead agency was that consensus became mandatory in order to move the process forward. The NDEP believes, in the best interest of achieving overall progress at the site, it is time to change the management structure so as to provide for a lead agency.

Since the signing of the MOU, data has been collected that increases the degree of complexity surrounding the Agencies' understanding of this project, particularly the ongoing discovery of the occurrence of multiple contaminant classes in multiple environmental media both on- and off-site. The NDEP commends the BLM for recognizing this complexity in their decision to oversee the project from the Nevada State Office. The NDEP's request herein for a change in the regulatory structure at the Yerington Mine also recognizes this complexity and the benefits of applying federal authority under section 106 of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) to this project.

The NDEP also recognizes that the rate of progress on the site has been improving, especially during the last couple of months. The recent collaboration between the BLM and the Atlantic Richfield Company (ARC) has resulted in progress toward resolving on-site health and safety issues as well as continued multi-agency development of plans for investigating off-site groundwater and background soil conditions. The NDEP also notes that the ARC has been consistently cooperative in the responsible management of fluids at the property and the implementation of short-term Action Plans directed by the agencies over the past year.

In consultation with Governor Guinn, the NDEP, on behalf of the State of Nevada, therefore, respectfully requests EPA's support to change the site management process and provide assistance at the Yerington Mine. This can be achieved by issuing an Administrative Order(s), unilateral or otherwise, under your authority pursuant to Section 106 of CERCLA. Furthermore, the NDEP requests that EPA continue to refrain from adding this site to the National Priorities List.

As you are aware, the State of Nevada, the EPA and local governments worked together in a similar arrangement at the Sparks Tank Farm project in Sparks, Nevada. At that site, the Division had a significant role as a partner with the EPA and was afforded full opportunity to participate in the characterization and cleanup.

The NDEP remains committed to moving this project forward while a timely transition to EPA oversight and termination of the MOU occurs. We look forward to continuing a long-term working relationship with the EPA, the BLM, the ARC and the other interested stakeholders under Federal oversight and management.

Sincerely,

*Signed copy on file with the Division*

Leo M. Drozdoff, P.E.  
Administrator

LD:JLC:jlc

Cc: Governor Kenny Guinn  
Mr. Allen Biaggi, Director, Conservation & Natural Resources  
Mr. Brian Sandoval, Attorney General  
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Suite 902, Reno, Nevada 89501  
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Office of Senator John Ensign, Mr. John P. Lopez, Deputy Chief of Staff, 364 Russell Senate Building,  
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Mr. Robert Abbey, Director, US BLM State Office, 1340 Financial Blvd., PO Box 12000, Reno, NV 89520  
Mr. Dan Ferriter, Atlantic Richfield Company, 6 Centerpointe Drive, Room 6-171, La Palma, CA 90623